

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

11/14/2013

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
C. Harrington
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI
JENNIFER L WILLMOTT

MINUTE ENTRY

The Court has considered Defendant's Renewed Request to Sequester Her Jury filed August 29, 2013, the Objection to Defendant's Renewed Request to Sequester her Jury filed October 7, 2013, Defendant's Reply to Objection to Defendant's Renewed Request to Sequester Her Jury filed October 16, 2013, and the oral argument conducted on November 1, 2013. In the motion, Defendant requests the Court sequester the jury in her upcoming sentencing phase retrial. Defendant argues the "plethora of media coverage . . . has overwhelmed the previous trial" and poses a threat to the integrity of the upcoming sentencing retrial.

Sequestration of the jury falls within the discretion of the trial court. A ruling on jury sequestration will not be disturbed absent an abuse of discretion and resulting prejudice to the defendant. Rule 19.4, *Arizona Rules of Criminal Procedure*, *State v. Cruz*, 218 Ariz. 149, 181 P.3d 196 (2008), and *State v. Schad*, 129 Ariz. 557, 568, 633 P.2d 366, 377, cert. denied, 455 U.S. 983, 102 S.Ct. 1492 (1981). To prove error, a defendant must show, in addition to publicity, that jurors did not follow the trial court's admonitions to avoid news reports of the trial. *State v. Bible*, 175 Ariz. 549, 858 P.2d 1152 (1993), *State v. Atwood*, 171 Ariz. 576 at 632, 832 P.2d 593 at 649 (1992) and *State v. Tison*, 129 Ariz. 546 at 551, 633 P.2d 355 at 360 (1981). The last jury sequestered in Maricopa was in *State v. Rendel*, 19 Ariz. App. 554, 509 P.2d 247 (1973).

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In this case, the Court has granted the defense motion to preclude live camera coverage of the trial. The Court expects there will be significantly less media coverage of the case during the retrial of the penalty phase. As noted by the State in its response, much of the media interest in the case was generated by the defendant contacting media outlets. Defendant now complains she cannot receive a fair sentencing phase retrial because of the media interest in her case and wants the jury sequestered for the duration of the sentencing phase retrial. The parties estimate the retrial will last at least two months.

This jury, like the last jury, will be monitored closely by the Court to assure the jurors follow the Court's admonition to avoid media coverage and not converse among themselves, or with anyone else, on any subject connected with the sentencing phase retrial. See Rule 19.4, *Arizona Rules of Criminal Procedure*. The Court will admonish the jury, verbally and in writing, not to access internet information, read newspapers, listen to the radio or watch television accounts about the case. The last jury complied with the Court's admonition for approximately five months. The Court has no reason to believe the jury selected for the sentencing phase retrial will not also follow the Court's orders.

During jury selection, the Court will explain the admonition and media restrictions to the jury panel to ascertain if potential jurors are willing to adhere to the Court's admonition. If a juror is not willing to comply, that juror will be excused.

The Court has considered the hardship to jurors that would result from being separated from family and friends for over two months (likely reducing the number of jurors willing to serve) and the substantial expense to the taxpayers that sequestration would involve. The Court finds the interests of justice do not require sequestration of the jury for the sentencing phase retrial in this case. The Court is confident the issues raised by the defense can be addressed by reminding jurors of their duty to follow the Court's admonition.

IT IS ORDERED denying Defendant's Renewed Request to Sequester Her Jury.